

May 26, 2022

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Adopt Rules 10.9216(b) and 10.9217 in Connection with a Companion Filing to Adopt Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of Its Affiliates

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 13, 2022, the NYSE Chicago, Inc. (“NYSE Chicago” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes, in connection with a companion filing to adopt investigation, disciplinary, sanction, and other procedural rules modeled on the rules of its affiliates, to (1) adopt new Rules 10.9216(b) and 10.9217 governing minor rule violations and fines; (2) add additional rules to the Exchange’s list of current minor rule violations that would be transposed to proposed Rule 10.9217; and (3) move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and make certain amendments and corrections. The proposed change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with a companion filing to adopt investigation, disciplinary, sanction, and other procedural rules modeled on the rules of its affiliates,<sup>4</sup> the Exchange proposes to (1) adopt new Rules 10.9216(b) and 10.9217 governing minor rule violations and fines; (2) add additional rules to the Exchange’s list of current minor rule violations that would be transposed to proposed Rule 10.9217; and (3) move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and make certain amendments and corrections.

**Background**

Beginning in 2013, each of the Exchange’s affiliates have adopted rules relating to investigation, discipline, sanction, and other procedural rules based on the rules of the Financial Industry Regulatory Authority (“FINRA”).<sup>5</sup> To facilitate rule harmonization among the

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<sup>4</sup> See SR-NYSECHX-2022-10.

<sup>5</sup> In 2013, the Commission approved the New York Stock Exchange LLC’s (“NYSE”) adoption of FINRA’s disciplinary rules. See Securities Exchange Act Release No. 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR-NYSE-2013-02). In 2016, NYSE American LLC (“NYSE American”) adopted its Rule 8000 and Rule 9000 Series based

Exchange's affiliates, the Exchange has separately proposed the NYSE Chicago Rule 10.8000 and 10.9000 Series based on the text of the NYSE Arca Rule 10.8000 and Rule 10.9000 Series, with certain changes, as described in its companion filing. In connection with adoption of the proposed NYSE Chicago Rule 10.8000 and 10.9000 Series,<sup>6</sup> the Exchange proposes to adopt NYSE Arca rules related to issuance of minor rule fines that would replace the Exchanges current Article 12, Rule 8 which sets forth the Exchange's Minor Rules Violation Plan ("MRVP").<sup>7</sup>

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on the NYSE and FINRA Rule 8000 and Rule 9000 Series. See Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR-NYSEMKT-2016-30). In 2018, the Commission approved NYSE National, Inc.'s ("NYSE National") adoption of the NYSE National Rule 10.8000 and Rule 10.9000 Series based on the NYSE American and FINRA Rule 8000 and Rule 9000 Series. See Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR-NYSENat-2018-02). In 2019, NYSE Arca, Inc. ("NYSE Arca") adopted the NYSE Arca Rule 10.8000 and 10.9000 Series based on the NYSE American Rule 8000 and Rule 9000 Series. See Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR-NYSEArca-2019-15).

<sup>6</sup> See note 4, *supra*.

<sup>7</sup> The Exchange adopted its current MRVP in 1996. See Securities Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (June 6, 1996) (SR-CHX-95-25) (Order). The original procedure authorizing the Exchange, in lieu of commencing disciplinary proceeding, to impose a fine, not to exceed \$2,500, on any member, member organization, associated person or registered or nonregistered employee of a member or member organization for any violation of an Exchange rule which the Exchange determines to be minor in nature was contained in as Article 12, Rule 9, now Article 12, Rule 8. The recommended dollar amounts for the first, second, third and subsequent violations, as calculated on a twelve-month rolling basis, of a rule designated as a minor rule violation was contained in a separate Recommended Fine Schedule in the Fee Schedule. See id., 61 FR at 28918-19 & n. 10.

In 2011, the Exchange increased the maximum fine pursuant to the MRVP from \$2,500 to \$5,000 and also increased the recommended fines from \$100/\$500/\$1000 for 1st, 2nd and 3rd tier fines, respectively, to \$250/\$750/\$1500. The Exchange also recommended fines of \$500/\$1000/\$2500 for other, more serious trading rule violations (*i.e.*, ones involving the potential for customer harm), as well as violations of the obligation to establish, maintain and enforce written supervisory procedures, and to provide information to the Exchange in connection with regulatory inquiries or other matters. Recommended fines of \$1000/\$2500/\$5000 were reserved for Trading Ahead violations.

Under current Article 12, Rule 8, in lieu of commencing a “disciplinary proceeding” as that term is used in Article 12 of the Exchange Rules, the Exchange may, subject to the requirements set forth in this Rule, impose a censure or fine, not to exceed \$5,000,<sup>8</sup> on any Participant, Associated Person, or registered or non-registered employee of a Participant, for any violation of a rule of the Exchange, which violation the Exchange shall have determined is minor in nature.<sup>9</sup> For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6.6800 Series, the Exchange may impose a minor rule violation fine of up to \$2,500. For more serious violations, other disciplinary action may be sought.

Any censure or fine imposed pursuant to Article 12, Rule 8 and not contested shall not be publicly reported, except as may be required by Rule 19d-1 under the Exchange Act, and as may be required by any other regulatory authority. Any censure or fine that is contested may be publicly reported to the same extent that Exchange disciplinary proceedings may be publicly reported. Any fine imposed pursuant to Article 12, Rule 8 that (1) does not exceed \$2,500 and (2) is not contested, shall be reported by the Exchange to the Securities and Exchange Commission (the “Commission”) on a periodic, rather than a current, basis, except as may

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The Exchange also expanded the rolling time period in which violations would result in escalation to the next highest tier from 12 to 24 months. See Securities Exchange Act Release No. 64370 (April 29, 2011), 76 FR 25727, 25727 (May 5, 2011) (SR-CHX-2011-07) (Notice); Securities Exchange Act Release 64686 (June 16, 2011), 76 FR 36596 (June 22, 2011) (SR-CHX-2011-07) (Order). See also text accompanying note 20, infra.

<sup>8</sup> Proposed Rule 10.9217 would retain the Exchange’s maximum \$5,000 fine for minor rule violations under current Article 12, Rule 8. While proposed Rule 10.9217 would allow the Exchange to administer fines up to \$5,000, the Exchange is only seeking relief from the reporting requirements of paragraph (c)(1) of Rule 19d-1 for fines administered under proposed Rule 10.9217 that do not exceed \$2,500.

<sup>9</sup> As set forth in Article 12, Rule 8(f), the Exchange is not required to impose a censure or fine with respect to the violation of any rule or policy included in any such listing and the Exchange shall be free, whenever it determines that any violation is not minor in nature, to proceed under other provisions of Article 12 rather than under Article 12, Rule 8.

otherwise be required by Exchange Act Rule 19d-1 and by any other regulatory authority. Under Article 12, Rule 8(b), the Chief Enforcement Counsel or Chief Regulatory Officer (“CRO”) have the authority to impose a fine pursuant to the rule.

Under Article 12, Rule 8(c), in any action taken by the Exchange pursuant to the rule, the person against whom a censure or fine is imposed shall be served as provided in Article 12, Rule 1(c) with a written statement, signed by an Exchange officer setting forth (1) the rule(s) or policy(ies) alleged to have been violated; (2) the act or omission constituting each violation; (3) the sanctions imposed for each violation; (4) the date on which such action is taken; and (5) the date on which such determination becomes final and such fine, if any, becomes due and payable to the Exchange, or on which such action must be contested as provided in paragraph (e) of Article 12, Rule 8, such date to be not less than 15 days after the date of service of the written statement. Pursuant to Article 12, Rule 8(d), if the person fined pursuant to the rule pays the fine, such payment is deemed a waiver of any right to a disciplinary proceeding under Article 12 and any right to review or appeal. Commentary .01 to Article 12, Rule 8 provides that, with respect to subsection (d), a failure to pay a fine imposed Article 12, Rule 8 by the time it is due, without timely contesting the action upon which such fine was based pursuant to Article 12, Rule 8(e), shall be deemed a waiver by the person against whom the fine is imposed of such person's right to a disciplinary proceeding under Article 12 and any right to review or appeal.

Under Article 12, Rule 8(e), any person censured or fined pursuant to the rule may contest such censure or fine by filing with the Secretary a written response meeting the requirements of an Answer as provided in Article 12, Rule 4(b) no later than the date by which such determination must be contested. The Secretary may deny the answer if such answer is untimely or the answer fails to meet the standards of Article 12, Rule 4(b). If the Secretary

denies the answer without leave to amend and refile, the sanction imposed by the Exchange pursuant to Article 12, Rule 8(b) shall become final and the censure shall be imposed and/or fine become due and payable. Unless denied by the Secretary, an answer filed by respondent is deemed accepted, at which point the matter shall become a “Disciplinary Proceeding” subject to the provisions of Article 12 applicable to disciplinary proceedings.

Pursuant to Article 12, Rule 8(f), the Exchange must prepare and announce to its Participants from time to time a listing of the Exchange rules and policies as to which the Exchange may impose censures or fines as provided in this Rule that must also indicate the specific or recommended dollar amount that may be imposed as a fine hereunder with respect to any violation of such rule or policy, or may indicate the minimum and maximum dollar amount that may be imposed by the Exchange with respect to any such violation. In applying the current Recommended Fine Schedule set forth in the Fee Schedule, the Exchange considers a violation as having occurred at the time that the underlying conduct of the Participant occurred. Nothing in Article 12, Rule 8 requires the Exchange to impose a censure or fine pursuant to the Rule with respect to the violation of any rule or policy included in any such listing and the Exchange shall be free, whenever it determines that any violation is not minor in nature, to proceed under other provisions of Article 12 rather than under Rule 8. Under Article 12, Rule 8(g), any fine assessed under Rule 8 cannot be deemed to satisfy any damages or liability incurred from the violation.

Article 12, Rule 8(h) sets forth the Exchange rules and policies that are subject to the MRVP.

### **Proposed Rule Change**

The Exchange proposes to adopt new Rules 10.9216(b) and 10.9217 based on NYSE Arca Rules 10.9216(b) and 10.9217. The Exchange would retain the text of the Exchange’s

currently applicable list of minor rule violations in proposed Rule 10.9217 and make certain corrections and additions, as described below. In addition, the Exchange would move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and make certain amendments and corrections. The Exchange proposes to add Rules 10.9216(b) and 10.9217 to Rule 10 governing disciplinary proceedings, other hearings and appeals that will house the proposed Rule 10.8000 and 10.9000 Series based on the text of the NYSE Arca Rule 10.8000 and Rule 10.9000 Series that is the subject of the Exchange's companion immediately effective filing.

Proposed Rule 10.9216(b)

Subsection (b) of proposed Rule 10.9216 (Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of Rules) would set forth the procedure for the imposition of fine for minor rule violations under the Exchange's new disciplinary rules based on NYSE Arca Rule 10.9216(b).<sup>10</sup> Proposed Rule 10.9216(b)(1) would provide that, notwithstanding Rule 10.9211,<sup>11</sup> the Exchange may, subject to the requirements set forth in paragraphs (b)(2) through (b)(4), impose a fine in accordance with the fine amounts and fine levels set forth in proposed Rule 10.9217 and/or a censure on any Participant,<sup>12</sup> Participant Firm

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<sup>10</sup> Proposed subsection (a) would establish the procedures by which a Participant, Participant Firm or covered person, prior to the issuance of a complaint, could execute a letter of acceptance, waiver, and consent accepting a finding of violation, consenting to the imposition of sanctions and waiving the right to a hearing or appeal. Proposed Rule 10.9216(a) would be adopted as part of the Exchange's companion filing. See note 4, supra.

<sup>11</sup> Proposed Rule 10.9211 (Authorization of Complaint) would be adopted as part of the Exchange's companion filing and would permit Enforcement to request the authorization from the Chief Regulatory Officer ("CRO") to issue a complaint against any Participant, Participant Firm and covered persons of a Participant or Participant Firm, thereby commencing a disciplinary proceeding.

<sup>12</sup> The term "Participant" is defined in Article 1, Rule 1(s) to mean, among other things, any Participant Firm that holds a valid Trading Permit and that a Participant shall be

or covered person<sup>13</sup> with respect to any rule listed in Rule 10.9217. If Enforcement has reason to believe a violation has occurred and if the Participant, Participant Firm or covered person does not dispute the violation, Enforcement may prepare and request that the Participant, Participant Firm or covered person execute a minor rule violation letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such Participant's, Participant Firm's or covered person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel,<sup>14</sup> and any right of review by the Exchange Board of Directors ("Board"), the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter would describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed would be a date to be determined by Regulatory Staff.<sup>15</sup>

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considered a "member" of the Exchange for purposes of the Act. If a Participant is not a natural person, the Participant may also be referred to as a Participant Firm, but unless the context requires otherwise, the term Participant shall refer to an individual Participant and/or a Participant Firm. For the avoidance of doubt, this rule filing and the proposed disciplinary rules will use the phrase Participant and/or Participant Firm.

<sup>13</sup> "Covered person" would be defined in proposed Rule 10.9120(g) in the companion filing as an Associated Person as defined in Article 1, Rule 1(d) and any other person subject to the jurisdiction of the Exchange.

<sup>14</sup> "Hearing Panel" and "Extended Hearing Panel" would be defined in proposed Rule 10.9120(s) and (p), respectively, in the companion filing. The term "Hearing Panel" would mean an Adjudicator that is constituted under proposed Rule 10.9231 to conduct a disciplinary proceeding governed by the proposed Rule 10.9200 Series, that is constituted under the proposed Rule 10.9520 Series or the proposed Rule 10.9550 Series to conduct a proceeding, or that is constituted under the Rule 10.9800 Series to conduct a temporary cease and desist proceeding. The term "Extended Hearing Panel" would mean an Adjudicator that is constituted under proposed Rule 10.9231(c) to conduct a disciplinary proceeding that is classified as an "Extended Hearing" and is governed by the proposed Rule 10.9200 Series.

<sup>15</sup> "Regulatory Staff" would be defined in proposed Rule 10.9120(x) in the companion filing as (1) any officer or employee reporting, directly or indirectly, to the CRO of the

Proposed Rule 10.9216(b)(2)(A)(i) would provide that if a Participant, Participant Firm or covered person submits an executed minor rule violation letter, the submission of such a letter by the Participant, Participant Firm or covered person also waives any right to claim bias or prejudgment of the CRO, the Board, Counsel to the Board, or any Director, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation letter or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule violation letter.

Proposed Rule 10.9216(b)(2)(A)(ii) would provide that if a Participant, Participant Firm or covered person submits an executed minor rule violation letter, by the submission such Participant, Participant Firm or covered person also waives any right to claim that a person violated the ex parte prohibitions of proposed Rule 10.9143 or the separation of functions prohibitions of proposed Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation letter or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule violation letter.<sup>16</sup>

Proposed Rule 10.9216(b)(2)(B) would provide that if a minor rule violation letter is rejected, the Participant, Participant Firm or covered person would be bound by the waivers made under proposed paragraphs (b)(1) and (b)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the minor rule violation letter was executed and submitted and ending upon the rejection of the minor rule violation letter.

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Exchange; and (2) FINRA staff acting on behalf of the Exchange in connection with the proposed Rule 10.8000 Series and Rule 10.9000 Series.

<sup>16</sup> Rule 10.9143 (Ex Parte Communications) would prohibit certain ex parte communications. Proposed 10.9144 (Separation of Functions) would establish separation of functions and provide for waivers.

Proposed Rule 10.9216(b)(3) would provide that if the Participant, Participant Firm or covered person executes the minor rule violation letter, it would be submitted to the CRO. The CRO, on behalf of the SRO Board, may accept or reject such letter.

Proposed Rule 10.9216(b)(4) would provide that if the letter is accepted by the CRO, it would be deemed final and that any fine imposed pursuant to the proposed Rule and not contested would not be publicly reported, except as may be required by Rule 19d-1 under the Act, and as may be required by any other regulatory authority.

Proposed Rule 10.9216(b)(4) would further provide that if the letter is rejected by the CRO, the Exchange may take any other appropriate disciplinary action with respect to the alleged violation or violations. Subsection (b)(4) would also provide that if the letter is rejected, the Participant, Participant Firm or covered person would not be prejudiced by the execution of the minor rule violation letter under proposed paragraph (b)(1) and that the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

As noted above, proposed Rule 10.9216(b) is substantially the same as NYSE Arca Rule 10.9216(b).

#### Proposed Rule 10.9217

The Exchange also proposes to adopt Rule 10.9217 based on NYSE Arca Rule 10.9217, which would be titled “Violations Appropriate for Disposition Under Rule 10.9216(b)”.

Proposed Rule 10.9217(a) would provide that any Participant, Participant Firm or covered person may be subject to a fine, not to exceed \$5,000,<sup>17</sup> under Rule 10.9216(b) with respect to any rules listed below and that the fine amounts and fine levels set forth below would

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<sup>17</sup> See note 8, *supra*.

apply to the fines imposed.

Proposed Rule 10.9217(b) would provide that Regulatory Staff designated by the Exchange would have the authority to impose a fine pursuant to the proposed Rule.

Proposed Rule 10.9217(c) would provide that any person or organization found in violation of a minor rule would not be required to report such violation on SEC Form BD or Form U-4 if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Subsection (c) would further provide that any fine imposed in excess of \$2,500 would be subject to current rather than quarterly reporting to the Commission pursuant to Rule 19d-1 under the Act.

Proposed Rule 10.9217(d) would provide that nothing in the proposed Rule would require the Exchange to impose a fine for a violation of any rule under this Minor Rule Plan and that if the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed under the proposed Rule 10.9000 Series rather than under proposed Rule 10.9217.

The next section would be titled “List of Rule Violations and Fines Applicable Thereto” and would provide that any Participant, Participant Firm or covered person may be subject to a fine under proposed Rule 10.9216(b) with respect to any rules listed below.

Proposed Rule 10.9217(e) would be titled “Exchange Rules and Policies subject to a Minor Rule Violation” and would set forth the list of rules under which a Participant, Participant Firm or covered person may be subject to a fine under a minor rule violation letter as described in proposed Rule 10.9216(b). The Exchange would retain the list of rules currently set forth in Article 12, Rule 8(h) under the existing headings for “Reporting and Record Retention

Violations” and “Minor Trading Rule Violations” with the following additions and changes.

First, the Exchange would add subsection (b) of Article 6, Rule 2 (Registration and Approval of Participant Personnel) to proposed Rule 10.9217(e)(13).

Article 6, Rule 2 currently sets forth certain employee registration, approval and other exchange requirements. Specifically, Article 6, Rule 2(a) governs registration of representatives, as defined in Article 6, Rule 14(b)(1), with the Exchange and is currently eligible for a minor rule fine under Article 12, Rule 8(h). Article 6, Rule 2(b) provides for the registration of principals, as defined in Article 6, Rule 14(a)(1). The Exchange proposes that the registration requirements of principals set forth in Article 6, Rule 2(b) be eligible for a minor rule fine. The proposed change would be consistent with the practice on the Exchange’s affiliates whose comparable rule requiring the registration of principals is eligible for a minor rule fine.<sup>18</sup>

Second, the Exchange would add subsections (a) and (b) of Article 6, Rule 5 (Supervision of Representatives and Branch and Resident Offices) to proposed Rule 10.9217(e)(14). As discussed below, the Exchange’s current minor rule incorrectly references Article 6, Rule 5(b) for violations relating to written supervisory procedures. The correct reference should be to Article 6, Rule 5(c), which the Exchange proposes to retain as proposed Rule 10.9217(e)(15).

Article 6, Rule 5(a) (Adherence to Law) provides that no Participant shall engage in conduct in violation of the Act, as amended, rules or regulations thereunder, the Bylaws or the Rules of the Exchange, or any written interpretation thereof and that every Participant is responsible for reasonably supervising its associated persons to prevent such violations. The

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<sup>18</sup> See, e.g., NYSE National Rules 2.2(c) (Obligations of ETP Holders and the Exchange) and 10.9217(f). The entirety of NYSE National Rule 2.2 is eligible for minor rule treatment; registration of principals under NYSE Nationals’ rules is governed by subsection (c).

requirement to reasonably supervise individuals to ensure compliance with applicable laws, rules and regulations, is currently eligible for minor rule fines in the rules of the Exchange's affiliate NYSE Arca.<sup>19</sup>

Article 6, Rule 5(b) (Designation of persons with supervisory authority) provides that each Participant Firm must designate a principal executive officer, general partner or managing partner to hold overall authority and responsibility for the firm's internal supervision and compliance with securities laws and regulations. This designated supervisor may formally delegate his or her supervisory duties and authority to other persons within the firm. The Rule further provides that Participants must maintain, for a period of not less than six years (the first two years in an easily accessible place), records of the names of all persons who are designated as supervisory personnel and the dates for which those designations are effective. In the absence of such designation by a Participant Firm, the Firm's General Partner(s), President, Chief Executive Officer or other principal executive officer shall be deemed to be responsible for a Firm's internal supervision and compliance function. In addition, each Participant Firm shall designate and specifically identify to the Exchange on Schedule A of Form BD one or more principals to serve as a Chief Compliance Officer. The requirement in Article 6, Rule 5(b) to designate and specifically identify persons with supervisory responsibility is currently eligible for minor rule fines in the rules of the Exchange's affiliate NYSE Arca.<sup>20</sup> The Exchange accordingly proposes to permit minor rule fines for violations of Article 6, Rule 5(b).

As noted, Article 12, Rule 8(h)(1)(N) of the Exchange's current minor rule plan makes failure to establish, maintain and enforce written supervisory procedures under Article 6, Rule

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<sup>19</sup> See NYSE Arca Rule 11.18(a) (Supervision) and 10.9217(g)(8).

<sup>20</sup> See NYSE Arca Rule 11.18(b)(2) & (4) (Supervision) and 10.9217(g)(8).

5(b) eligible for a minor rule fine. However, as described above Article 6, Rule 5(b) relates to the designation of persons with supervisory authority and not written supervisory procedures, which is governed by Article 6, Rule 5(c). In 2011, Article 12, Rule 8 was amended to include, among other things, new reporting and recordkeeping provisions, which included “written supervisory procedures (Article 6, Rule 5(b)).”<sup>21</sup> At the time, Article 6, Rule 5(b) was titled “Written supervisory procedures” and contained the text of current subsection (c). In 2013, the Exchange filed to amend Article 6, Rule 5. As part of that filing, subsection (a), which was titled “Designation of persons with supervisory authority,” became new subsection (b), and old subsection (b), which was titled “Written supervisory procedures,” became current subsection (c).<sup>22</sup> The Exchange did not, however, update Article 12, Rule 8 to reflect that Article 6, Rule 5(b) had become Article 6, Rule 5(c). The Exchange proposes to make that correction in the text of proposed Rule 10.9217(e)(15). The Exchange notes that the requirement to establish, maintain and enforce written procedures is also currently eligible for minor rule fines in the rules of the Exchange’s affiliate NYSE Arca.<sup>23</sup>

Finally, the Exchange proposes a new subsection (f) titled “Recommended Fine Schedule” that would reproduce the current Recommended Fine Schedule from the Fee Schedule with the following changes and corrections. The Recommended Fine Schedule in the Fee Schedule would be deleted:

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<sup>21</sup> See Securities Exchange Act Release No. 64370 (April 29, 2011), 76 FR 25727, 25727 (May 5, 2011) (SR-CHX-2011-07) (Notice); Securities Exchange Act Release 64686 (June 16, 2011), 76 FR 36596 (June 22, 2011) (SR-CHX-2011-07) (Order). See generally note 7, *supra*.

<sup>22</sup> See Securities Exchange Act Release No. 70597 (October 2, 2013), 78 FR 62728, 62732 (October 22, 2013) (SR-CHX-2013-14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change).

<sup>23</sup> See NYSE Arca Rule 11.18(c) (Supervision) and 10.9217(g)(8).

- The Exchange would add a new sub-heading titled “Reporting and Record Retention Violations”<sup>24</sup> that would set forth the corresponding fines for first, second and third and subsequent violations for the rules set forth under the heading “Reporting and Record Retention Violations” in proposed Rule 10.9217(e).
- The first 12 entries as well as entries 16 through 23 would be reproduced without change from the current Recommended Fine Schedule in the Fee Schedule.
- Item 13 would be “Registration and Approval of Participant Personnel (Article 6, Rule 2(a) & (b))”. The proposed first, second and third level fines for violations of Article 6, Rule 2(b) of \$250 for the first violation, \$750 for the second violation and \$1,500 for the third and subsequent violations would be the same as those in the Exchange’s current Recommended Fine Schedule in the Fee Schedule for violations of Article 6, Rule 2(a).
- Items 14 and 15 -- “Failure to Comply with Supervision Requirements (Article 6, Rule 5(a) & (b))” and “Written Supervisory Procedures (Article 6, Rule 5(c)),” respectively -- would be added to proposed Rule 10.9271(f) consistent with the changes to proposed Rule 10.9217(e)(14) and (15) described above. The proposed first, second and third level fines for violations of Article 6, Rule 5(a) and (b) in proposed Rule 10.9217(e)(14) and Article 6, Rule 5(c) in proposed Rule 10.9217(e)(15) would be \$500 for the first violation, \$1,000 for the second violation and \$2,500 for the third and subsequent violations. These fine levels

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<sup>24</sup> Immediately before the new sub-heading, the Exchange would include the following text based on NYSE Arca Rule 10.9217: “These fines are intended to apply to minor violations. For more serious violations, other disciplinary action may be sought.”

would be the same as the current fines in the Recommended Fine Schedule in the Fee Schedule for violations of Article 6, Rule 5(b).

- Finally, item 24 would be “Consolidated Audit Compliance Rule (Rule 6.6800 Series).” The corresponding fine “Up to \$2,500.00” would be transposed from current Article 12, Rule 8 to new footnote \*\* following “Rule 6.6800 Series.”<sup>25</sup> The Exchange would also add the current text from Article 12, Rule 8(a) providing that “For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6.6800 Series, the Exchange may impose a minor rule violation fine of up to \$2,500. For more serious violations, other disciplinary action may be sought” to new footnote \*\*.
- The Exchange would add a new second sub-heading titled “Minor Trading Rule Violations” that would set forth the corresponding fines for first, second and third and subsequent violations for the 11 rules set forth under the heading “Minor Trading Rule Violations” in proposed Rule 10.9217(e), with the following changes and corrections:
  - The entry for “Failure to clear the Matching System (Article 20, Rule 7)” and corresponding fines would not be included. This rule was deleted from Article 12, Rule 8 8(h)(2)(F) in 2019 as part of the transition of trading on the Exchange to the Pillar trading platform but the Exchange inadvertently failed to update the Recommended Fine Schedule in the Fee

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<sup>25</sup> In 2020, the Exchange added the Consolidated Audit Trail (“CAT”) industry member compliance rules to the list of minor rule violations in Article 12, Rule 8 and the corresponding fine up to \$2,500. At the time, the Exchange inadvertently did not amend the Recommended Fine Schedule in the Fee Schedule. See Securities Exchange Act Release No. 89410 (July 28, 2020), 85 FR 46741 (August 3, 2020) (SR-CHX-2020-21).

Schedule.<sup>26</sup>

- The Exchange would include “Short Sales (Rule 7.16)” as item 10. Rule 7.16 was added to Article 12, Rule 8 in 2019 as part of the transition of trading on the Exchange to the Pillar trading platform but the Exchange inadvertently failed to update the Recommended Fine Schedule in the Fee Schedule.<sup>27</sup> The proposed first, second and third level fines for violations of Rule 7.16 of \$500 for the first violation, \$1,000 for the second violation and \$2,500 for the third and subsequent violations are the same as those in NYSE Arca Rule 10.9217(i)(1)1. for violations of NYSE Arca Rule 7.16-E.<sup>28</sup>
- Finally, the Exchange would include “Failure to comply with Authorized Trader requirements (Rule 7.30)” as item 11. Rule 7.30 was also added to Article 12, Rule 8 as part of the transition to Pillar in 2019 but the Exchange inadvertently failed to update the Recommended Fine Schedule in the Fee Schedule.<sup>29</sup> The proposed first, second and third level fines for violations of Rule 7.30 of \$1,000 for the first violation, \$2,500 for the second violation and \$3,500 for the third and subsequent violations are the same as those in NYSE Arca Rule 10.9217(i)(1)5. for violations of NYSE

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<sup>26</sup> See Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345, 55349 (October 16, 2019) (SR-CHX-2019-08).

<sup>27</sup> See *id.*

<sup>28</sup> See NYSE Arca Rule 7.16-E (Short Sales) & 10.9217(i)(1)1.

<sup>29</sup> See Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345, 55349 (October 16, 2019) (SR-CHX-2019-08).

## Arca Rule 7.30-E.<sup>30</sup>

As noted, proposed subsection (a) of proposed Rule 10.9217 is substantially the same as NYSE Arca Rule 10.9217(a) except for changes reflecting the Exchange's membership. The Exchange proposes that a fine thereunder would not exceed \$5,000 (the amount reflected in current Article 12, Rule 8).<sup>31</sup>

Proposed subsections (b), (c) and (d) are also substantially the same as NYSE Arca Rule 10.9217(b), (c) and (d) with the only changes reflecting the Exchange's membership.

Unlike current Article 12, Rule 8(e) described above, proposed Rule 10.9216(b) and Rule 10.9217 would not permit a Respondent to contest a minor rule violation letter. Rather, as proposed, if the Respondent rejects the minor rule violation letter, then a complaint must be filed under proposed Rule 10.9211, and the minor rule violation letter may not be introduced into evidence.<sup>32</sup> The Exchange believes the proposed rule is appropriate because it will harmonize the Exchange's minor rule violation process with its affiliates' rules.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>33</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>34</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market

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<sup>30</sup> See NYSE Arca Rule 7.30-E (Authorized Traders) & 10.9217(i)(1)5.

<sup>31</sup> See note 8, *supra*.

<sup>32</sup> See proposed Rule 10.9216(b)(4).

<sup>33</sup> 15 U.S.C. 78f(b).

<sup>34</sup> 15 U.S.C. 78f(b)(5).

and a national market system and, in general, to protect investors and the public interest.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules. The Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of its rules governing reporting, record retention and trading in situations where either a cautionary action letter or a more formal disciplinary action may not be warranted or appropriate.

As noted, the Exchange would retain its list of minor rule violations with certain technical and conforming amendments, while adopting its affiliates' process for imposing minor rule violation fines.<sup>35</sup> In addition, as set forth in the Exchange's companion filing and herein, the Exchange believes that adding certain rules to its list of eligible minor rule violations based on the rules of its affiliate will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation.

Specifically, the proposed additions are designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of its rules governing general registration and supervision requirements in situations where a more formal disciplinary action may not be warranted or appropriate. As provided for in proposed Rule 10.9217(d), nothing in proposed Rule 10.9217 would require the Exchange to

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<sup>35</sup> See NYSE Arca Rule 10.9216(b), NYSE Rule 9216(b), & NYSE American Rule 9216(b). See also generally FINRA Rule 9216(b).

impose a minor rule fine for a violation of any eligible rule and that if the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed with formal disciplinary action rather than under proposed Rule 10.9217.

The Exchange also believes that adding rules based on the rules of its affiliate to its list of eligible minor rule violations would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of substantially similar rules that are eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct. As noted above, Article 6, Rule 2(b), 5(a) and 5(b) are substantially similar to NYSE National and NYSE Arca rules of similar purpose, which are each separately eligible for a minor rule fine under the respective market's version of proposed Rule 10.9217.<sup>36</sup>

Further, the Exchange believes that the proposed additions to its list of rules eligible for minor rule fines based on the rules of its affiliate are consistent with Section 6(b)(6) of the Act,<sup>37</sup> which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations pursuant to the Exchange's rules and would increase the amounts of fines in order for the Exchange to better deter violative activity and to harmonize its rules with that of its affiliates.

The Exchange believes that moving the Recommended Fine Schedule for minor rule

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<sup>36</sup> See text accompanying notes 18-23, supra.

<sup>37</sup> 15 U.S.C. 78f(b)(6).

violations from the Fee Schedule to proposed Rule 10.9217 and removing it from the Fee Schedule would add clarity and transparency to the Exchange's rules by reflecting the recommended fines for minor rule violations in the same place in the Exchange's rules. Similarly, updating the Recommended Fine Schedule to delete obsolete rules and add recommended fines for rules that were added to the list of minor rules but inadvertently omitted from the Recommended Fine Schedule would also add clarity and transparency to the Exchange's rules. The Exchange believes that adding such clarifying language would also be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion.

Further, the Exchange believes that adding recommended fines for Rule 7.16 and Rule 7.30 that were inadvertently omitted from the current Recommended Fine Schedule based on the fines for the same rules set forth in the rules of its affiliate would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of substantially similar rules that are eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct. As noted above, the proposed first, second and third level fines for violations of Rule 7.16 are the same as those in NYSE Arca Rule 10.9217(i)(1)1. for violations of NYSE Arca Rule 7.16-E, and the proposed first, second and third level fines for violations of Rule 7.30 are the same as those in NYSE Arca Rule 10.9217(i)(1)5. for violations of NYSE Arca Rule 7.30-E.<sup>38</sup>

Finally, the Exchange also believes that the proposed changes are designed to provide a

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<sup>38</sup> See notes 27-29, *supra*.

fair procedure for the disciplining of members and persons associated with members consistent with Sections 6(b)(7) and 6(d) of the Act.<sup>39</sup> Proposed Rules 10.9216(b) and 10.9217 would not preclude a Participant, Participant Firm or covered person from rejecting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to update the Exchange's rules to strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct and to harmonize its rules with the rules of its affiliate.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

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<sup>39</sup> 15 U.S.C. 78f(b)(7) & 78f(d).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSECHX-2022-08 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSECHX-2022-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSECHX-2022-08 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>40</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>41</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act<sup>42</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,<sup>43</sup> which governs minor rule violation plans.

The Commission believes that Rules 10.9216(b) and 10.9217, which are based on the rules of an affiliate exchange, are an effective way to discipline a member for a minor violation of a rule. The Commission also believes that the proposed addition of certain rules to the Exchange's list of current minor rule violations provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. In addition, the Commission believes that the Exchange's proposal to move the Recommended Fine Schedule for minor rule violations

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<sup>40</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>41</sup> 15 U.S.C. 78f(b)(5).

<sup>42</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

<sup>43</sup> 17 CFR 240.19d-1(c)(2).

from the Fee Schedule to proposed Rule 10.9217 and make certain amendments and corrections are consistent with the Act because these changes will add clarity to the Exchange's rules.

In approving the propose rule change, the Commission in no way minimizes the importance of compliance with the Exchange's rules and all other rules subject to fines under Rules 10.9216(b) and 10.9217. The Commission believes that a violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, Rules 10.9216(b) and 10.9217 provide a reasonable means of addressing rule violations that may not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under Rules 10.9216(b) and 10.9217 or whether a violation requires formal disciplinary action.

For the same reasons as discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>44</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the Federal Register.<sup>45</sup> The proposal will assist the Exchange in preventing fraudulent and manipulative practices by allowing

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<sup>44</sup> 15 U.S.C. 78s(b)(2).

<sup>45</sup> As stated above, the Commission notes that the proposed rule change was submitted in connection with an immediately effective companion filing, SR-NYSECHX-2022-10, adopting investigation, disciplinary, sanction and other procedural rules modeled on the rules of the Exchange's affiliates. See supra note 4 and accompanying text. In-SR-NYSECHX-2022-10, the Exchange states that it intends to announce by Information Memorandum with at least 30 days advance notice the operative date of the rules proposed in SR-NYSECHX 2022-10, which also includes proposed Rules 10.9216(b) and 10.9217. Thus, proposed Rules 10.9216(b) and 10.9217 will be operative at the same time as all the rules proposed in SR-NYSECHX-2022-10.

the Exchange to adequately enforce compliance with, and provide appropriate discipline for, violations of Exchange rules. Moreover, the proposed changes raises no new or novel issues. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>46</sup> and Rule 19d-1(c)(2) thereunder,<sup>47</sup> that the proposed rule change (SR-NYSECHX-2022-08) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>48</sup>

J. Matthew DeLesDernier,  
Assistant Secretary.

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<sup>46</sup> 15 U.S.C. 78s(b)(2).

<sup>47</sup> 17 CFR 240.19d-1(c)(2).

<sup>48</sup> 17 CFR 200.30-3(a)(12).